



End discrimination based on sexual orientation and gender identity

Statement of Thomas Witt
Statement in Opposition to SB 410
House Committee on the Judiciary
March 15, 2016

Good afternoon Mr. Chairman and members of the committee.

I am Thomas Witt, Executive Director of Equality Kansas, which works to eliminate discrimination based on sexual orientation and gender identity. We are opposed to SB410 in its current form, the CARE family pilot program for foster care.

LGBT Kansans have the same goals of forming families and raising children as everyone else. Fair treatment from agencies and contractors offering foster and adoption placement is essential. Some statistics on same-sex parenting in the United States:

- Researchers estimate the total number of children nationwide living with at least one gay parent ranges from 6 to 14 million.¹
- An estimated two million LGBT people are interested in adopting.²
- As of 2007, gay and lesbian parents were raising four percent of all adopted children in the United States.³
- More than 16,000 same-sex couples are raising an estimated 22,000 adopted children in the United States.³
- Same-sex parents in the United States are four times more likely than different-sex parents to be raising an adopted child. Among couples with children under the age of 18 in the home, 13% of same-sex parents have an adopted child, compared to just 3% of different-sex parents.³

As introduced, SB410 sets forth a number of requirements for participation in the CARE family pilot program. In New Section 1(b)(1), the bill stipulates that CARE family applicants be “married for at least seven years.” As we are all aware, same-sex couples were unconstitutionally prohibited from marrying, or having our out-of-state marriages recognized, in Kansas until mid-2015.

We believe the seven-year standard may violate equal protection provisions of both the Kansas and United States constitutions. Not only will opposite sex couples be able to immediately enjoy this particular benefit of marriage, but same-sex couples married out of state seven or more years ago will also meet this standard. Meanwhile, native Kansans in committed, long-lasting relationships, who waited patiently for the years – in many cases decades – for marriage equality in our home state will be denied access to the benefits of SB410.

¹ Overview of Lesbian and Gay Parenting, Adoption and Foster Care. American Civil Liberties Union, New York, NY.

² Gary J. Gates, M.V. Lee Badgett, Kate Chambers, Jennifer Macomber, Adoption and Foster Care by Gay and Lesbian Parents in the United States. The Williams Institute, Los Angeles, CA. 2007.

³ Gary J. Gates. LGBT Parenting in the United States. The Williams Institute, Los Angeles, CA. 2013.

With the advent of full marriage equality, we expect even more same-sex couples to start families. Should you recommend this bill favorably for passage, we urge you to ensure their fair treatment, avoid the potential for costly litigation, and correct the unequal standard in SB410 by striking Section 1(b)(1).

Our next significant concern is the “volunteer” provision of New Section 1(c)(3), for two reasons: Potential fiscal impact, and cost burdens imposed on CARE families.

A bill similar to SB410 was introduced in 2015 as SB158. That bill, which was heard but never worked, came with a fiscal note of \$26.5 million dollars. The bulk of that cost would have come from non-compliance with Title IV-E, and the subsequent loss of grant funding. The other \$1 million or so would have come from proposed higher payments to CARE families. SB410 attempts to correct the compliance problem by declaring CARE families would receive *no* compensation for providing foster care to children in the Department for Children and Family’s custody. SB410’s fiscal note, like SB158’s fiscal note, warns of the loss of federal grant funding:

The Department of Health and Human Services, Administration for Children and Families (ACF), requires that states establish one rate for each placement type. Assuming that ACF would consider CARE families to be the same as regular family foster homes, the fact that no payments would be made to these families causes concern that ACF would conclude that Kansas is out of compliance with Title IV-E Foster Care requirements. If that were the case, all Title IV-E funding would be suspended. There is currently over \$20.0 million of Title IV-E Foster Care funding in the FY 2017 budget. (emphasis added)

Should this program eventually be found compliant with Title IV-E, the proponents assertion that CARE families shouldn’t be in the foster care system “just for the money” is troubling and shortsighted. Many children in DCF custody are at-risk, special needs children who require more expensive care than their peers. While the fiscal note from last year’s SB158 states an average daily foster care reimbursement rate of \$20.60, a 2012 report from state contractor KVC lists reimbursement rates for at-risk and special needs children as high as \$45 per day. There is no provision in SB410 for assisting CARE families with extraordinary costs associated with children who are developmentally disabled, who have been physically or emotionally abused, or have been victims of human trafficking. Many children in DCF custody have been abused and abandoned by their families because of the child’s sexual orientation or gender identity.

If CARE families are not going to be compensated, will they be willing to provide foster care to special-needs or at-risk children? Are we going to set up a system of foster care where certain children can be placed with CARE families, while the rest are left with what this bill’s proponents have publicly described as for-profit foster homes? Are we setting up a two-tier system that provides the highest quality foster care only for some children? How does this satisfy the best interest of the child?

Also of concern to us is the lack of any definition of “stable relationship” in New Section 1(b)(1), and the “socially involved” provision in 1(b)(8). How does one define “stable?” How is that measured by DCF? And what does “socially involved” mean? Proponents of this legislation have stated DCF will exercise their judgement and discretion in developing standards and definitions, but can DCF be entrusted with such a broad mandate? Questions and controversy surrounding DCF’s screening and placement practices have led to a DCF oversight bill, HB2585, which has been blessed by House leadership and is heading to the floor. In our opinion, this is not the time to be granting DCF broader authority to pick and choose which families are more worthy than others, especially when legislative guidance on these two issues is non-existent.

We urge you to reject SB410. It’s a potentially budget-busting bill that fails to make provision for special needs and at-risk children, that sets up an unequal and unfair placement program, and that will certainly lead to costly litigation. I am happy to stand for questions.